

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 16 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                                   |   |                            |
|-----------------------------------|---|----------------------------|
| ADELAIDE A.,                      | ) | 2 CA-JV 2010-0023          |
|                                   | ) | DEPARTMENT B               |
| Appellant,                        | ) |                            |
|                                   | ) | <u>MEMORANDUM DECISION</u> |
| v.                                | ) | Not for Publication        |
|                                   | ) | Rule 28, Rules of Civil    |
| ARIZONA DEPARTMENT OF ECONOMIC    | ) | Appellate Procedure        |
| SECURITY, MARIAH A., VERONICA A., | ) |                            |
| and HEAVEN A.,                    | ) |                            |
|                                   | ) |                            |
| Appellees.                        | ) |                            |
| _____                             | ) |                            |

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. J13956200

Honorable Stephen M. Rubin, Judge

AFFIRMED

Peter G. Schmerl, P.C.  
By Peter G. Schmerl

Tucson  
Attorney for Appellant

Terry Goddard, Arizona Attorney General  
By Pennie J. Wamboldt

Prescott  
Attorneys for Appellee Arizona  
Department of Economic Security

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B R A M M E R, Judge.

¶1 Adelaide A. appeals from the juvenile court’s February 2010 order adjudicating her children, Mariah A., age 15, Veronica A., age 14, and Heaven A., age 12, dependent. On appeal, Adelaide argues the court abused its discretion because it did not make specific findings as required by Rule 55, Ariz. R. P. Juv. Ct., and A.R.S. § 8-844(C)(1)(a)(ii). Adelaide also argues there was insufficient evidence to support the court’s finding that the children were dependent. For the following reasons, we affirm.

¶2 “On review of an adjudication of dependency, we view the evidence in the light most favorable to sustaining the juvenile court’s findings.” *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 21, 119 P.3d 1034, 1038 (App. 2005). So viewed, the evidence established that on September 24, 2009, the Child Protective Services (CPS) hotline received a report that Veronica, then thirteen years old, had been diagnosed with a major depressive disorder, had been cutting herself on her wrists and arms, and was threatening suicide. According to CPS investigator Cassandra Thompson, there were also complaints that Adelaide was not attending psychiatric appointments with her daughters and was allowing Veronica and Mariah to “com[e] and go[] as they pleased.”

¶3 When Thompson investigated the report, she learned Veronica had left Adelaide’s home sometime during the summer of 2009 and had refused to return. In addition, when Thompson interviewed Adelaide the day after the hotline report, Adelaide told her fourteen-year-old Mariah had been missing for more than twenty-four hours.<sup>1</sup> Thompson reported that Adelaide also acknowledged that she had not set a curfew for her

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<sup>1</sup>At the dependency hearing, Thompson testified that Mariah had remained missing for several more days before returning home.

daughters and that she knew Mariah had engaged in sexual relations with a nineteen-year-old boyfriend in the family home. According to Thompson, Adelaide “openly admit[ted] that she [did] not have proper control of” the girls. Thompson also interviewed the family’s behavioral services case manager, who told her Adelaide was “not dealing well” with the recent death of her son RJ and had not been attending her daughters’ medication reviews with the agency.

¶4 ADES reactivated an earlier juvenile court proceeding and filed a dependency petition, and the court awarded temporary legal custody of all three girls to ADES.<sup>2</sup> Mariah and Heaven remained in Adelaide’s physical custody, but Veronica had refused to return to Adelaide’s home and was temporarily placed with her father.<sup>3</sup> Although CPS had provided in-home services to assist the family, Adelaide had not always been home when the scheduled workers arrived and, as of October 27, she still had not participated in required drug abuse screening. Service providers also had “expressed concern that [Adelaide was] still allowing the children to come and go as they please.” In late November, ADES filed an amended dependency petition alleging the

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<sup>2</sup>Mariah, Veronica, and Heaven were first adjudicated dependent in 2002, when the juvenile court found, by incorporation of the allegations in a dependency petition, that Adelaide “was under stress due to her unstable relationship” with the children’s father and that “[t]he children [we]re in need of consistency and stability in the areas of education, discipline, parenting, and mental health services.” We affirmed that decision on appeal. *See Adelaide A. v. Ariz. Dep’t of Econ. Sec.*, No. 2 CA-JV 2002-0081 (memorandum decision filed July 22, 2003). According to ADES, that dependency proceeding was dismissed in June 2003 after Adelaide successfully participated in reunification services.

<sup>3</sup>Apparently, Veronica was later placed in a group home. The children were adjudicated dependent as to their father after he failed to appear for a status hearing on December 7, 2009.

above facts established Adelaide was “unable to provide the children with safe, proper, and effective parental care and control” and “has unaddressed mental health issues which may inhibit her ability to parent.” *See* A.R.S. § 8-201(13)(a)(i) (“dependent child” includes child “[i]n need of proper and effective parental care and control and who has no parent . . . willing to exercise or capable of exercising such care and control”).

¶5 At a contested dependency hearing in January 2010, CPS case manager Shirley Sorensen opined that the three girls were dependent children and that Adelaide was “in need of remedial services in order to be able to properly supervise her children.” Sorensen’s opinion was based in part on Dr. Jill Plevell’s December 2009 psychological evaluation of Adelaide. According to Sorensen, Plevell had reported that, in order to be an effective parent, Adelaide “needs to be able to assume a leadership role with her children[,] . . . to demonstrate how she plans to effectively provide structure and control her children[,] . . . [and] to be able to protect [her children].” In an under advisement ruling, the juvenile court found, “by a preponderance of the evidence, that the allegations contained in the Dependency Petition as they pertain to [Adelaide] are true” and adjudicated the children dependent.

### **Absence of Specific Findings**

¶6 We agree with ADES that Adelaide has waived her challenge to the juvenile court’s order on the ground that it lacked specific findings. Although Adelaide is correct that such findings are required by statute and rule, *see* A.R.S. § 8-844(C)(1)(a)(ii); Ariz. R. P. Juv. Ct. 55, when a party fails to object below to “the alleged lack of detail in the juvenile court’s findings,” the issue is deemed waived, and we will

not consider it on appeal. *Christy C. v. Ariz. Dep't of Econ. Sec.*, 214 Ariz. 445, ¶ 21, 153 P.3d 1074, 1081 (App. 2007) (termination order). As the court explained in *Christy C.*, “a party may not ‘sit back and not call the trial court’s attention to the lack of a specific finding on a critical issue, and then urge on appeal that mere lack of a finding on that critical issue as a ground[] for reversal.’” *Id.*, quoting *Bayless Inv. & Trading Co. v. Bekins Moving & Storage Co.*, 26 Ariz. App. 265, 271, 547 P.2d 1065, 1071 (1976) (alteration added).<sup>4</sup>

### Sufficiency of the Evidence

¶7 “We generally will not disturb a dependency adjudication unless no reasonable evidence supports it.” *Willie G.*, 211 Ariz. 231, ¶ 21, 119 P.3d at 1038. Citing her own testimony about progress she has made, as well as the testimony of her adult son and a close family friend, Adelaide maintains “there is nothing in the record to support a finding of dependency at the time of the [dependency hearing].” But, essentially, Adelaide is asking us to reweigh the evidence, which we will not do. *See In re Pima County Juv. Action No. 118537*, 185 Ariz. 77, 79, 912 P.2d 1306, 1308 (App.

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<sup>4</sup>Assuming, without deciding, that fundamental error review otherwise would be available for an unpreserved claim of error in a dependency proceeding, Adelaide has waived that review by failing to argue that the juvenile court’s omission of specific findings constituted fundamental, prejudicial error. *Cf. Monica C. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 89, ¶ 23, 118 P.3d 37, 42 (App. 2005) (applying fundamental error doctrine to termination of parental rights); *see also State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17, 185 P.3d 135, 140 (App. 2008) (failure to allege fundamental error on appeal waives argument). *But see Bradshaw v. State Farm Mut. Auto. Ins. Co.*, 157 Ariz. 411, 420, 758 P.2d 1313, 1322 (1988) (review for fundamental error “sparingly applied in civil cases and may be limited to situations . . . [that] deprive[] a party of a constitutional right”). In any event, we discern no such prejudicial error on this record. *See Christy C.*, 214 Ariz. 445, n.5, 153 P.3d at 1081 n.5 (any error resulting from absence of express findings “would have been harmless, and remand not required”).

1994). “[T]he juvenile court [is] in the best position to weigh the evidence, judge the credibility of the parties, observe the parties, and make appropriate factual findings.” *In re Pima County Dependency Action No. 93511*, 154 Ariz. 543, 546, 744 P.2d 455, 458 (App. 1987). We agree with ADES that the evidence, as detailed above, was sufficient to support the court’s ruling.

### Conclusion

¶8 Adelaide has failed to establish any error warranting reversal of the juvenile court’s findings of dependency, and those findings are supported by reasonable evidence in the record. Accordingly, we affirm the court’s dependency order and disposition.

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Judge